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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,075	08/04/2003	Benham Moradi	3446.SUS (97-1019.05/US)	5239
24247	7590	04/13/2004	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			SANTIAGO, MARICELI	
			ART UNIT	PAPER NUMBER
			2879	

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/634,075

Applicant(s)

MORADI ET AL.

Examiner

Mariceli Santiago

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/4/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

The Amendment, filed on November 24, 2003, has been entered and acknowledged by the Examiner.

Claims 1-23 are pending in the instant application.

### *Specification*

The current status of all nonprovisional parent applications referenced should be included. Reference to prior art applications should be updated to recite patent number, i.e., "This application is a continuation of U.S. Patent Application No. 09/885,624, filed on June 20, 2001, **now U.S. Patent No. 6,630,781**,..."

### *Double Patenting*

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 13-23 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 15-23, 25 and 26, respectively, of prior U.S. Patent No. 6,630,781. This is a double patenting rejection.

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Regarding claim 13, claim 15 of Patent '781 claims a display device comprising an electrode structure having a gate located proximal<sup>1</sup> an emitter, a focusing electrode, an insulating layer disposed between the gate electrode and the focusing electrode, wherein the insulating layer further comprises a ridge located closer to the emitter than a sidewall of the first electrode or a sidewall of the second electrode.

Claims 16-23, 25 and 26 of Patent '781 claim an electrode structure as stated in claims 14-23 of the instant application.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 12 and 13 of U.S. Patent No. 6,630,781. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons.

U.S. Application SN 10/634,075	U.S. Patent No. 6.630,781	Reasons for rejection under obviousness-type double patenting
Claim 1	Claim 1	Patent '781 claims an electrode structure for a display device having an emitter comprising a first electrode located proximal

1. Definitions obtained from Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> ed.

**prox-i-mal** *adjective*

a. Situated close to; proximate.

**prox-i-mate** *adjective*

a. Immediately preceding or following.

**ad-ja-cent** *adjective*

a. Immediately preceding or following

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		(syn., adjacent) the emitter, a second electrode, an insulating layer disposed between the first electrode and the second electrode, wherein the insulating layer further comprises a ridge located closer to the emitter than a sidewall (portion) of the first electrode or a sidewall (portion) of the second electrode.
Claims 2-12	Claim 2-10, 12 and 13	Claims 2-10, 12 and 13 of Patent '781 claim an electrode structure as essentially stated in claims 2-12 of the instant application.

Claims 1, 3-6 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-20 of U.S. Patent No. 6,630,781. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons.

U.S. Application SN 10/634,075	U.S. Patent No. 6.630,781	Reasons for rejection under obviousness-type double patenting
Claims 1 and 3	Claim 17	Patent '781 claims an electrode structure for a display device having an emitter comprising a gate (first) electrode located proximal (syn., adjacent) the emitter, a focusing (second) electrode, an insulating layer disposed between the gate (first) electrode and the focusing (second) electrode containing a ridge located closer to the emitter than a sidewall of the gate (first) electrode or a sidewall of the focusing (second) electrode.
Claims 4-6	Claim 18-20	Claims 4-6 of Patent '781 claim an electrode structure as essentially stated in claims 18-20 of the instant application.
Claim 13	Claim 17	Patent '781 claims an electrode structure for a display device having an emitter comprising a gate electrode located proximal (syn., adjacent) the emitter, a focusing electrode, an insulating layer disposed between the gate electrode and the focusing electrode containing a ridge located closer to the emitter than a sidewall of the gate electrode or a sidewall of the focusing electrode.

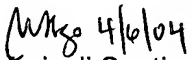
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**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mariceli Santiago whose telephone number is (571) 272-2464. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimesh Patel, can be reached on (571) 272-2457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

  
Mariceli Santiago  
Patent Examiner  
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